

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO  
ALBUQUERQUE DIVISION

JAMES J. WILCOX, §  
Plaintiff, §  
v. §  
HARLEY-DAVIDSON, INC. §                   **CASE NO.** \_\_\_\_\_  
Defendant. §  
§   **JURY DEMANDED**

**PLAINTIFF'S COMPLAINT**

COMES NOW, JAMES J. WILCOX, complaining of HARLEY-DAVIDSON, INC. and would respectfully show the following:

**I. PARTIES**

1. Plaintiff, JAMES J. WILCOX, is a resident and citizen of the State of New Mexico.
2. Defendant, HARLEY-DAVIDSON, INC. ("HARLEY-DAVIDSON") is a foreign corporation doing business in the State of New Mexico that may be served through its registered agent for service of process, C T Corporation System, 8025 Excelsior Dr., Suite 200, Madison, Wisconsin 53717, by certified mail, return receipt requested.

**II. JURISDICTION AND VENUE**

3. This Court has jurisdiction over this case under 28 U.S.C. §1332(a)(1) because Plaintiff and Defendant are citizens of different states and the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000), excluding interest and costs.
4. The Court has personal jurisdiction over Defendant because, at all relevant times, Defendant transacted business in New Mexico and has purposefully maintained continuous and

systematic contacts with New Mexico exceeding the minimum contacts under the New Mexico Long Arm Statute and the federal constitutional requirements of due process.

5. Venue is proper because the acts complained of occurred in New Mexico and Defendant conducts business in the district and division.

### **III. STATEMENT OF FACTS**

6. HARLEY-DAVIDSON is a manufacturer of motorcycles engaged in interstate commerce. The motorcycles are sold throughout the United States, including the State of New Mexico.

7. In or about 2006, HARLEY-DAVIDSON manufactured a motorcycle with Vehicle Identification No. 1HD1JDB186Y093518 ("the Motorcycle"). The Motorcycle was placed in interstate commerce for sale in the State of New Mexico.

8. On or about June 24, 2006, Plaintiff purchased the motorcycle from an authorized HARLEY-DAVIDSON dealer in Roswell, New Mexico.

9. On or about June 24, 2006, shortly after purchasing the motorcycle, Plaintiff was returning from Roswell, New Mexico to his home in Ruidoso, New Mexico.

10. Plaintiff was operating the motorcycle in a safe and prudent manner on U.S. Highway 70, New Mexico 299 in Lincoln County, New Mexico.

11. Suddenly, and unexpectedly, the throttle of the motorcycle malfunctioned causing Plaintiff to lose control of the motorcycle.

12. Plaintiff lost control of the motorcycle and was involved in a violent and serious collision.

13. Plaintiff was thrown violently from the motorcycle causing serious and permanent bodily injuries.

14. The collision and resulting personal injuries were proximately caused by the malfunction and defects of the motorcycle.

15. As a result of these events, Plaintiff suffered severe personal injury damages including physical pain and mental anguish, loss of earning capacity, disfigurement, physical impairment, and medical expenses. In reasonable probability, Plaintiff will continue to incur these damages in the future.

#### **IV. CLAIMS FOR RELIEF**

##### **COUNT I - NEGLIGENCE**

16. As the manufacturer of the motorcycle, HARLEY-DAVIDSON was required to exercise ordinary care that a manufacturer of ordinary prudence would have exercised under the same or similar circumstances.

17. HARLEY-DAVIDSON was negligent in the manufacturing of the motorcycle in that it failed to use ordinary care, that is, failing to do that which a manufacturer of ordinary prudence would have done under the same or similar circumstances or doing that which a manufacturer of ordinary prudence would not have done under the same or similar circumstances.

##### **COUNT II - MANUFACTURING DEFECT**

18. At the time it left HARLEY-DAVIDSON's control, the motorcycle was defective in that it was in a condition that rendered it unreasonably dangerous.

19. The manufacturing defect was a proximate and producing cause of Plaintiff's injuries.

**COUNT III. DESIGN DEFECT**

20. At the time the motorcycle left HARLEY-DAVIDSON's control, the motorcycle had a design defect in that it was unreasonably dangerous as designed, taking into consideration the utility of the product and the risk involved in its use.

21. The design defect was a proximate and producing cause of Plaintiff's injuries.

**COUNT IV. MARKETING DEFECT**

22. At the time it left HARLEY-DAVIDSON's control, the motorcycle had a marketing defect in that it failed to give adequate warnings of the product's danger.

23. The marketing defect was a proximate and producing cause of Plaintiff's injuries.

**COUNT V. BREACH OF IMPLIED WARRANTY**

24. At the time it left HARLEY-DAVIDSON's control, the motorcycle was unfit for the ordinary purposes for which the motorcycle was to be used.

25. This breach of the implied warrant of merchantability was a proximate and producing cause of Plaintiff's injuries.

**V. COMPENSATORY AND EXEMPLARY DAMAGES**

26. The allegations set forth in paragraphs 6 through 25 herein are incorporated into this section by reference, as if restated verbatim.

27. Plaintiff seeks all compensatory and punitive damages as provided by the laws of the State of New Mexico.

**VI. REQUEST FOR JURY**

28. Plaintiff respectfully requests trial by jury on all issues so properly triable.

**VII. PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the Court enter

judgment in his favor on all claims and causes of action asserted herein including compensatory and exemplary damages, costs of court, prejudgment interest, post-judgment interest, and such other and further relief at law or in equity to which Plaintiff may be justly entitled.

Signed this \_\_\_\_ day of \_\_\_\_, 2007

Respectfully submitted,

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By: /s/ Dennis L. Richard

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